

Issue Summary: HB 1565 - Rulemaking

Problem Statement:

According to individuals and entities most affected by agency rulemaking, the current rule making process has not prevented some agencies from continuing to adopt rules that create significant fiscal impacts on small businesses and increase bureaucracy in ways unintended by the Legislature.

Background:

The bill required that certain proposed rules that have a negative economic impact receive legislative ratification prior to taking effect.

Under the bill, an agency would have to prepare a statement of estimated regulatory costs prior to the adoption, amendment, or repeal of any rule that has an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within 1 year after implementation of the rule. Additionally, the agency would have to include an economic analysis of whether the proposed rule is likely to have an adverse impact in excess of \$1 million in the aggregate within 5 years after implementation of the rule on economic growth, private-sector job creation or employment, private-sector investment, or business competitiveness and note whether the proposed rule increases regulatory costs, including any transactional costs in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; in which case, the rule may not take effect until ratified by the Legislature.

Governor's Veto:

In his veto letter, the Governor stated, "this bill encroaches on the principle of separation of powers . . . If HB 1565 did become law, nearly every rule may have to await an act of the Legislature to become effective. This could increase costs to businesses, create more red tape, and potentially harm Florida's economy."

Effect of Override:

Contrary to the Governor's assertion that the bill encroaches on the principle of separation of powers, it is entirely consistent with the constitutional policy setting role of the Legislature and prior rulings of the Florida Supreme Court. The courts have stated that rulemaking is a legislative function, within the exclusive authority of the Legislature under the separation of powers provision of the Florida Constitution. A state administrative agency has no authority to adopt rules apart from the authority delegated to it by the Legislature.

The bill, as passed, changes the criteria for how certain rulemaking authority granted to agencies is addressed. Under the bill, rules having economic impacts above specified thresholds cannot take effect unless the Legislature, as a body, reviews and ratifies those rules.

Failure to override the Governor's veto will allow executive agencies to continue adopting administrative rules with significant negative economic impacts at a time when the state's economy is struggling to recover from the most serious economic downturn.